

**JPA File No.: 05-055**  
AG Contract No.: KR05-1249TRN  
Project No.: N/A  
Project: Landscape Maintenance  
Section: B-40, Crestview  
**TRACS No.: MAINTAGR**  
**Budget Source Item No.: N/A**

**LANDSCAPE MAINTENANCE**  
**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF HOLBROOK

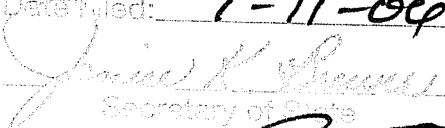

**THIS AGREEMENT** is entered into this date January 11, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF HOLBROOK, acting by and through its MAYOR and CITY COUNCIL (the "City").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The State and the City are in mutual agreement to provide maintenance and irrigation systems to the existing landscape for midtown B-40 TI, 135 Crestview, hereinafter referred to as the "Project". The State shall be responsible for the maintenance of the landscape and the City shall be responsible to provide water and to maintain the irrigation systems. The responsibility of each of the parties is defined in the Agreement under Section II. Scope of Work.

**THEREFORE**, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

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NO. 27930  
Filed with the Secretary of State  
Date Filed: 1-11-06  
  
Secretary of State  


## **II. SCOPE OF WORK**

### **1. The State shall:**

a. Be responsible to provide landscape maintenance. Maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices. This includes keeping all areas free of weeds, undesirable grasses and litter, apply irrigation water when the existing system is being repaired, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed and established.

b. Grant the City an "Encroachment Permit" through the Holbrook District Permits Office, for work inside the State's Control of Access to permit the City to perform all maintenance to the irrigation system, including adjustments and repairs to the system.

c. Not be obligated to maintain the irrigation system, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

### **2. The City shall:**

a. Obtain the necessary "Encroachment Permit" through the Holbrook District Permits Office, for all planned maintenance work to the irrigation system.

b. Comply with policy regarding the provisions of State's Maintenance Manual.

c. Furnish all water for landscape necessary to properly maintain the landscape, all at the City's expense.

d. Not be responsible to perform any other regular maintenance activities in the State's right-of-way.

e. Upon execution, and approval, accept the Project on behalf of the parties hereto, provide for perpetual and proper maintenance, adjusting, repairing and operation of the irrigation system, all at their own expense.

f. Furnish and pay for all electrical power necessary to operate the irrigation system, all at the City's expense.

## **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect for an period of five-years (5) from the effective date, unless this Agreement violates any Arizona Law, rule or regulation, either now enacted or which may be enacted in the future. This Agreement will be automatically renewed for successive periods of 5 years unless either party give notice in writing to the other not less than one month (1) nor more than three months (3) prior to the initial or renewed expiration date. Further, this Agreement may be cancelled by the State at any time upon 30 days written notice. It is understood and agreed upon that, in the event this Agreement is cancelled by the City, the State shall in no way be obligated to maintain said Project.

2. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.
6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
Phone (602) 712-7525  
Fax (602) 712-7424

City of Holbrook  
Attn: Ron Eisele, Public Works Director  
465 1<sup>st</sup> Avenue  
Holbrook, Arizona 86025  
Phone (928) 524-6225  
Fax (928) 524-2159

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State and City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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**IN WITNESS WHEREOF**, the parties have executed this Amended Agreement the day and year first above written.

**CITY OF HOLBROOK**

By   
BRYAN SMITHSON  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By   
SUSAN TELLEZ  
Contract Administrator

ATTEST:

By   
CHER MILLAGE  
Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF HOLBROOK

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 13<sup>th</sup> day of December, 2005.

  
City Attorney

**RESOLUTION NO. 05-25**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF  
HOLBROOK, ARIZONA AUTHORIZING AN INTERGOVERNMENTAL  
AGREEMENT BETWEEN THE CITY OF HOLBROOK AND THE ARIZONA  
DEPARTMENT OF TRANSPORTATION FOR LANDSCAPE IRRIGATION  
AND MAINTENANCE.**

**RECITALS**

WHEREAS, pursuant to the provisions of Arizona Revised Statutes Section 11-951, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, (the "State"), and the CITY OF HOLBROOK, and

WHEREAS, the community and Council Members of the City of Holbrook have made beautification and landscaping a priority, and

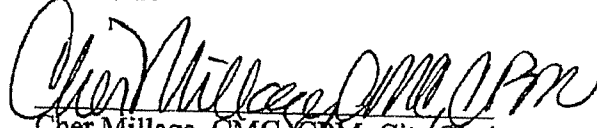
WHEREAS, the Council Members of the City of Holbrook obligates, per **Intergovernmental Agreement – (JPA File No.: 05-055)**, to provide an irrigation systems for the existing landscape at the midtown B-40 TI and maintenance of such system;

THEREFORE BE IT RESOLVED by the Mayor and Members of the City Council of Holbrook, Arizona to authorize and support the Landscape Maintenance Joint Project Agreement with the Arizona Department of Transportation.

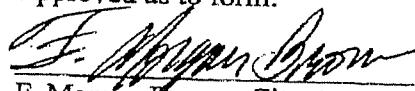
**PASSED AND ADOPTED** this 13<sup>th</sup> day of December 2005 by the Mayor and City Council Members of the City of Holbrook, Arizona.

  
Bryan Smithson, Mayor

ATTEST:

  
Cher Millage, CMC, CPM, City Clerk

Approved as to form:

  
F. Morgan Brown, City Attorney



TERRY GODDARD  
Attorney General

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
Writer's Direct Line:  
602.542.8855  
Facsimile: 602.542.3646  
E-mail: Susan Davis@azag.gov

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-1249TRN (**JPA 05-055**), an Agreement between public agencies, i.e., The State of Arizona and The City of Holbrook, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: December 22, 2005

TERRY GODDARD  
Attorney General

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:940013  
Attachment